Competition Bureau
Industry Canada
Fee and Service Standards

Handbook
pursuant to the *Competition Act*

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Summary Information

Introduction

Effective Monday, November 3, 1997, fees apply to certain services and regulatory requirements delivered under the *Competition Act* (the "Act") by the Competition Bureau (the Bureau), Industry Canada. Fees are in effect for pre-merger notification filings (PMN filings), Advance Ruling Certificates (ARCs), Advisory Opinions (AOs), and photocopies.

This handbook provides detailed information pertaining to the fees and the service standards that apply to these services and regulatory processes.

Service/Regulatory Process Standards

Service or Regulatory Process	Maximum Turn-around Times (Calender Days)
Mergers (Notifiable Transactions and Advance Ruling Certificates)	
non-complex	14 days
complex	10 weeks
very complex	5 months
Advisory Opinions	
Sections 52 to 60 (Misleading Advertising and Deceptive Marketing Practices)	
non-complex	8 days
complex	30 days
Other provisions	
non-complex	4 weeks
complex	8 weeks
Photocopies	

Time Frames will normally commence when the application or request for service is received.

For further details refer to pages 6 to 7.

Complexity: parties will be advised as soon as possible of the Bureau's decision regarding complexity and the applicable service standard. The definitions of complexity for advisory opinions and mergers are at Appendix C.

Services, Fees and Applicable Taxes

Service or Regulatory Process	Fees for Quebec residents	Fees for residents of all other provinces
Premerger Notifiable Filings *	Total = $25,000	Total = $25,000
Advance Ruling Certificates*	$25,000 + GST($1,750.)= $26,750+ QST ($2,006.75) Total = $28,756.25	$25,000 + GST($1,750.) Total = $26,750
Premerger Notifiable Filings for * Asset Securitizations	Total = $50	Total = $50
Advance Ruling Certificates for* Asset Securitizations	$50 + GST ($3.50) = $53.50 + QST($4.01) Total = $57.51	$50 + GST($3.50) Total = $53.50
Advisory Opinions Sections 52 to 60 (Misleading Advertising and Deceptive Marketing Practices)	$500 + GST($35.00)=$535 + QST($40.12) Total = $575.12	$500 + GST($35.00) Total = $535.00
Advisory Opinions (Other provisions)	$4,000 + GST($280) = $4,280+ QST($321) Total = $4,601	$4,000 + GST($280) Total = $4,280
Photocopies	$.25 + GST($.02) = $.27 + QST($.02) Total = $.29/page	$.25 + GST($.02) = $.27
Request for interpretations of or compliance with prohibition orders and judgements and request made by non-profit community-based organizations.	$50 + GST ($3.50) = $53.50 + QST($4.01) Total = $57.51	$50 + GST($3.50) Total = $53.50

*When both a Premerger Notifiable Filing and an Advance Ruling Certificate request are filed in respect of the same transaction, only the fee for an ARC applies.

Payments may be made by VISA, Mastercard or cheque payable to the Receiver General for Canada. Advance Ruling Certificates requests, Advisory Opinions requests and photocopying services are subject to the GST; Quebec residents add provincial sales tax.

GST is not payable, when the request for services is made by a non-resident, as defined in

sections 123 and 132 of the Excise Tax Act.

Refunds will be provided, on request, in certain circumstances. Refer to page 5.

Detailed information on these and other matters is included in this document to assist those who will use the above services and regulatory processes. If you have other questions, please refer to the Competition Bureau's document entitled Frequently Asked Questions, which is available at **http://strategis.ic.gc.ca/competition**. Copies of this document can also be obtained from the Bureau.

Requests for services/regulatory processes may be sent to the addresses shown in the table below. Anyone who is unclear regarding a process or the information that should be provided to the Bureau should contact the following:

Services/Regulatory Processes	**Addresses**	**Telephone**
Pre-merger Notification filings, Advance Ruling Certificates or Advisory Opinions under sections 91 to 123	Competition Bureau Industry Canada 50 Victoria St. Hull, Quebec K1A 0C9 Attn.: Prenotification Unit	Pre-notification Unit Mergers Branch Phone: (819) 953-7092 1-800-348-5358 Facsimile: (819) 953-6169
Advisory Opinions under sections 52 to 60 (Misleading Advertising and Deceptive Marketing Practices).	Competition Bureau Industry Canada 50 Victoria St. Hull, Quebec K1A 0C9 Attn.: Fair Business Practices Branch	Information Centre Phone: (819) 997-4282 1-800-348-5358 Facsimile: (819) 997-0324
Advisory Opinions under sections 45 to 51 and section 61	Competition Bureau Industry Canada 50 Victoria St. Hull, Quebec K1A 0C9 Attn.: Criminal Matters Branch	Information Centre Phone: (819) 997-4282 1-800-348-5358 Facsimile: (819) 997-0324

Advisory Opinions under sections 75 to 90	Competition Bureau Industry Canada 50 Victoria St. Hull, Quebec K1A 0C9 Attn.: Civil Matters Branch	Information Centre Phone: (819) 997-4282 1-800-348-5358 Facsimile: (819) 997-0324

FEE AND SERVICE STANDARDS HANDBOOK

COMPETITION BUREAU
INDUSTRY CANADA

Background

The Bureau examined the implementation of fees for quite some time. Toward this end, there were consultations with interested parties on several occasions. In 1993, a consultation document on the issue of charging for Premerger notification filings, Advance ruling certificates and photocopies was circulated for comment. No action was taken, given the lack of legislative authority to implement fees at that time. Such authority was confirmed with the passage of the *Department of Industry Act* in 1995. Accordingly, the subject of fees received renewed attention.

In March 1995, members of the business and legal communities were surveyed regarding their views of the Bureau's Program of Advisory Opinions and the possibility of implementing fees for advisory opinions. While respondents were generally satisfied with the Program, they expressed concern regarding the length of time it took to receive opinions and their highly-qualified nature. On the issue of fees, respondents expressed a preference for fixed fees rather than an hourly rate. There was a general view that fees should be waived in certain instances such as requests dealing with the interpretation of prohibition orders and judgements.

In June 1997, the Bureau held fora with major stakeholders in order to obtain their views regarding a proposal to implement fees for ARC requests, PMN filings, AOs, photocopies and photocopies of seized documents. A revised consultation paper was circulated widely in July 1997.

This Fee and Service Standards Handbook reflects the results of the consultation process undertaken by the Bureau.

Principles

The Bureau views the introduction of its Fee and Service Standards Policy as a more disciplined method to identify and measure its performance in certain areas. The Bureau will also ensure that those who seek services or are bound by regulatory requirements have timely and systematic opportunities to provide input regarding service levels and standards.

In the case of the Bureau's Fee and Service Standards Policy, Treasury Board has agreed to provide vote-netting authority to the Bureau on an on-going basis to expend revenue generated by PMN filings, ARC requests, AOs and photocopies. Vote-netting is a vehicle for the funding of expenditures that requires a direct relationship between costs incurred to provide a service and revenues collected. In Treasury Board's view, it encourages increased cost effectiveness, optimal resource utilisation, responsiveness to clients and good business practices. The Bureau will use

fee revenues to improve the services from which they were earned.

The Bureau's Fee and Service Standards Policy is consistent with the Federal Government's Cost Recovery and Charging Policy, which stipulates that those who benefit most from a service should pay for it and emphasises a need for participatory consultation between departments and their clients before the introduction of charges, and on a continuing basis thereafter.

There are specific and identifiable recipients who benefit from the services and regulatory processes identified in the Bureau's program. However, it is also true that the public at large derives benefit from effective enforcement and administration of the Act. In view of this general public benefit, the fees do not recover all the costs incurred in the execution of these activities. In keeping with the government's principle of fairness, the Bureau has determined that given the public benefit aspect, it is appropriate to cover part of the costs of dealing with PMN filings, ARC requests and AO requests through general taxation. The full cost for photocopies will be charged to users.

Services, Regulatory Processes and Fees

Note should be made of the following details regarding the services and regulatory processes for which the Bureau will be charging fees.

Pre-merger Notification Filings, pursuant to section 114 and Advance Ruling Certificates, pursuant to section 102

PMN filings and ARC requests will be subject to a fee of $25,000.00 per transaction. PMN filings are not subject to GST; ARC requests are subject to GST; Quebec residents must add provincial sales tax. In addition, non-residents of Canada are not required to pay GST as provided by Schedule VI of the Excise Tax Act, Part 5, Section 9.

PMN filings and ARC requests for the class of transactions normally referred to as asset securitizations will be charged a fee of $50.00 per transaction.

Pursuant to Part IX of the Act, PMN filings are required in respect of specified proposed transactions. Generally, notification is required when the parties to a transaction, together with

their affiliates, have combined assets in Canada or annual sales revenues in, from or into Canada greater than $400 million and the specific transaction involves:

- an acquisition of assets in Canada of an operating business, where the value of those assets or the annual revenue sales in or from Canada generated by those assets is greater than $35 million;

- an acquisition of voting shares of a company that has assets in Canada or annual revenue from sales in or from Canada of greater than $35 million, where, in the case of a public company, the transaction would result in the acquiring party owning more than 20% or 50% of the voting shares or, in the case of a private company, more than 35% or 50% of the voting shares;

- an amalgamation of corporations, where the value of the assets in Canada of the corporations or the annual revenue from sales in or from Canada by the corporations is greater than $70 million; or a combination, where the value of the assets in Canada involved or the annual revenue from sales in or from Canada from the assets involved is greater than $35 million.

When these thresholds are met the persons proposing the transaction are required to notify the Director of Investigation and Research ("Director") of the proposed transaction and provide the information specified in the Act. In addition, parties to a notifiable transaction are required to wait for the expiry of a specified waiting period before completing the transaction.

The provisions of Part IX of the Act are complex; if in any doubt, parties to a transaction should seek legal advice on the applicability of the provisions in their particular case.

Under section 102 of Part IX of the Act, where the Director is satisfied by the parties to a proposed transaction that he would not have sufficient grounds to apply to the Competition Tribunal for a remedial order under section 92 (the substantive merger provision of Part VIII of

the Act), the Director may issue an ARC in respect of the proposed transaction. Issuance of an ARC by the Director exempts the transaction from application of the notifiable transactions provisions.

Where the Director exercises the discretion not to issue an ARC, parties may still be required to file a PMN to the Director before proceeding with their transaction, if the applicable thresholds are exceeded. However, in such cases, or where the parties to a proposed transaction choose to provide both a PMN filing and request an ARC, only the fee for an ARC will be charged. However, in such cases GST and, if applicable, Quebec sales tax will be charged.

Maximum turnaround times for the analysis of mergers will depend on the complexity of the matter. Definitions for non-complex, complex and very complex mergers are found at Appendix C. Parties will be notified of the classification of their transaction within five business days of receipt of the filing or request.

Details regarding the information needed by the Bureau for analysis of non-complex, complex and very complex merger transactions are found at Appendix A.

Advisory Opinions

Pursuant to the Program of Advisory Opinions, the Bureau has historically provided its views on proposed actions by businesses. While the Bureau will continue to respond to requests for opinions, fees will be charged for a specific type of opinion, i.e. one that states, on the basis of facts provided by the requester and existing Bureau enforcement policies and jurisprudence (i.e., without recourse to third-party information), whether or not a proposed course of action would cause the Director to initiate an inquiry under the Act or the Director considers a particular transaction to be notifiable under Part IX of the Act.

The opinion will be based on the information provided by the requester. Persons who are unsure of what information is required should contact the Bureau at the appropriate number listed in the Summary Information Section of this handbook. Additional details concerning information requirements for various provisions of the Act are included at Appendix A.

Advisory opinion requests pertaining to sections 52 to 60 of the Act (commonly referred to as the misleading advertising and deceptive marketing practices provisions) will be subject to a fee of $500.00, while requests pertaining to other sections of the Act will be subject to a fee of $4,000.00. AO requests are subject to GST; Quebec residents add provincial sales tax.

Requests for AOs made by non-profit community based organizations and requests for interpretations of or compliance with prohibition orders and judgements will be subject to a fee of $50.00.

Appendix B is a letter indicating the form such opinions will take.

Maximum turnaround times for AOs will depend on the complexity of the request. Definitions for complexity of advisory opinion requests are found at Appendix C. Parties will be notified of the category of their opinion request as soon as possible after receipt.

To promote compliance with, and foster transparency in the administration and enforcement of the Act, the Bureau will publish opinions that add to the understanding of how the law is administered or where a new issue or sector of the economy is being examined. With the consent of the requesting parties, opinions will be published in their entirety or in an edited version that protects identities and commercially sensitive information.

Photocopies

Photocopies will be subject to a fee of $0.25 per page. Photocopies are subject to GST; Quebec residents add provincial sales tax.

Fees for photocopies apply to requests to the Bureau for photocopies, including requests for copies of documents seized under warrants issued pursuant to section 15 of the Act that have not been returned to the parties from whom they were seized. Bureau policy does provide that

parties subject to search may make copies of essential working documents prior to their being removed from the premises.

General

Fees for PMN filings, ARC requests and AO requests are to be submitted with the filing or request. Fees for photocopies are due on completion of the work. ARC requests, AO requests and photocopying services are subject to the GST; Quebec residents add provincial sales tax.

The Bureau will respond to PMN filings and requests for ARCs whether or not the applicable fee is submitted at the time of the filing or request. If the fee is not submitted with the filing or request, a debt to the Crown will be recorded and payment will be pursued through normal procedures after the fact. AO's and photocopies will not be released to the client without payment.

- **Upon written request**, refunds will be provided in the following circumstances:
- in the case of a PMN filing, where the parties withdraw the transaction **within two days** of filing;
- in the case of a request for an ARC, if the request is withdrawn **within two days** of application and the certificate has not been issued;
- in the case of an AO request other than for sections 52 to 60, if the request is withdrawn **within two days** of filing;[1]
- in the case of an over-payment;

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1 Due to the short turn-around times, no refunds will be available on AO requests under sections 52-60 of the Act.

- where both an ARC and PMN are submitted on the one transaction, the two day refund period will apply only to the first document submitted.

Service Standards

In recognition that fees should not be imposed without a corresponding benefit to its clients, the Bureau, in consultation with stakeholders, has established service standards for the services and regulatory processes covered by the program. Due to the varying nature of the complexity of proposed mergers and requests for advisory opinions, maximum turn around times for three classes of merger transactions and two classes of advisory opinions have been created. The definitions for classifying a request or filing are at Appendix C.

The service standards are as follows:

Service or Regulatory Process	Fee	Maximum Turn-around Time
Mergers (Notifiable Transactions and Advance* Ruling Certificates)		
non-complex	$25,000	14 days
complex	$25,000	10 weeks
very complex	$25,000	5 months
Advisory Opinions*		
Sections 52 to 60 (Misleading Advertising and Deceptive Marketing Practices)		
non-complex	$500	8 days
complex	$500	30 days
Other provisions		
non-complex	$4,000	4 weeks
complex	$4,000	8 weeks
Photocopies	$0.25 pg.	

* Exceptions apply see pages 2 and 4

It should be noted that these standards represent the maximum time within which one can expect the delivery of the stated service or regulatory process. The Bureau will

contact the requester early in the process, if required, to confirm that a request or filing falls within a particular category.

Timeframes - Mergers

The appropriate time frame for review of a PMN filing or ARC request will normally commence on receipt of the filing or request. Within five business days the parties will be notified of the transaction's complexity category and the appropriate service standard timeframe will be applied. The Bureau is committed to providing services within the above timeframes, but requires factual information on key elements required in merger review, such as information on product and geographic markets as well as conditions of entry, to conduct its analysis. To assist parties in ensuring that they submit the necessary information, the Bureau has established guidelines suggesting the type of information normally required in order to meet these timeframes. These are included at Appendix A. If the information accompanying the parties' request is deficient, they will be advised of what further information is needed and the service level time frame will not commence until the required information is provided to the Bureau.

The service standard timeframe ends when the Bureau has advised the parties whether or not the Director has grounds to file an application before the Competition Tribunal in respect of the transaction. Therefore, time devoted to discussions or negotiations aimed at resolving issues or preparations required for proceedings before the Competition Tribunal, or the time required to conduct actual Competition Tribunal proceedings, are not included within the service standards for PMN filings or ARC requests.

Timeframes - Advisory Opinions

Timeframes will commence immediately upon receipt of the request. Guidelines related to the information usually required by the Bureau to analyse the request are included in Appendix A. As all responses to AO requests will be final, parties or their counsel are encouraged to contact the Bureau prior to submitting a request if they are uncertain of the information required for a particular request. If parties are not satisfied with the Bureau's position on an AO request and wish that the issues raised be re-visited on the basis of additional information, this will be considered as a separate request and the appropriate fee will be required.

Review Mechanisms

In addition to turn-around times, other service standards will be established during the course of the next 12 months.

Clients will also be invited to provide feedback to the Bureau by completing brief evaluation cards which will be included with each response.

Any concerns with regard to operational issues in relation to these services and regulatory processes should be addressed to the Deputy Director of Investigation and Research and Director General, Compliance & Operations Branch, who will examine the matter and provide feedback to the parties. The Deputy Director's address and telephone number are:

Competition Bureau
Industry Canada
50 Victoria Street
Hull, Quebec
K1A 0C9
Telephone: (819) 953-7942
Facsimile: (819) 953-5013

Any resolution deemed by a party to be unsatisfactory will be further investigated by the Senior Deputy Director of Investigation and Research. The Senior Deputy Director's address and telephone number are:

Competition Bureau
Industry Canada
50 Victoria Street
Hull, Quebec

K1A 0C9
Telephone: (819) 994-1860

Facsimile: (819) 953-6169

The Bureau also intends to conduct a thorough review after its first year of implementation to assess the program from an operational and client perspective.

The Bureau will also establish a forum to meet with stakeholders on an regular basis to review performance, complaints and service levels.

Appendix A

Definitions and Guidelines

Advisory Opinions

Definition

The specific opinion for which fees will be charged will be based on the written request and information submitted by the applicant as well as on previous jurisprudence, previous opinions, Bureau knowledge and the stated policies of the Director. The Bureau will not undertake third party contacts or verifications.

The Bureau will continue to provide other preliminary views that do not fall within the scope of the advisory opinion as defined above. This may be in the form of a request for the review of existing or proposed business conduct where the requester wishes the Bureau to seek third party advice. There will not be a fee at this time, nor will there be any service standards for a reply. As this type of activity is more within the realm of an investigation, the request will be measured against other priorities within the Bureau and resources will be assigned accordingly.

Advisory Opinions - Information usually required to assist the Bureau in meeting turn-around times.

Advisory opinions are prepared with the objective of assisting business people in implementing strategies that they believe will improve their competitive position, without coming into conflict with the *Competition Act*. The Bureau attempts to provide these opinions in as flexible a manner as possible, recognising the importance of anonymity at times, and the level

of comfort the requesting parties aspire to receive. It should be understood by the parties that the assurances provided by these opinions are directly proportional to the accuracy and amount of the information upon which they are based.

Information that is helpful to the Bureau in responding to a request for an advisory opinion will, in most cases, relate to the assessment of how the proposed business plan will affect the level of competition in a specific market. Following an initial determination and depending on the complexity of the issue, or on the details of a proposed plan, other specific information may be needed to analyse the manufacturing, distribution, sales, pricing, promotional or other situation contemplated by those requesting the opinion.

Following in this appendix are guidelines indicating the information needed by the Bureau to conduct its analysis in the case of the civil provisions other than mergers, mergers, the misleading advertising and deceptive marketing practices provisions, and other criminal provisions.

Civil Provisions (other than Mergers)

Information Guidelines

Introduction

On occasion, advisory opinions are requested by companies or individuals who are inquiring as to whether or not the actions they propose to engage in would raise concerns under the civil provisions of the *Competition Act*. An advisory opinion is based on actual facts and not hypothetical situations; however, if such facts are incomplete or have changed, the opinion will be subject to review.

Information which is useful in responding to a request for an advisory opinion will, in most cases, relate to the assessment of how the proposed business plan will affect competition in a specific market. While each of the civil provisions refers to a particular competitive situation, the core of the analysis of a proposed plan will relate to determining, as accurately as possible, the actual product and geographic markets involved. Following this determination, other specific information will be needed to analyse the business plan being contemplated by those requesting the opinion.

Described below are the two categories of information which, if provided, will greatly enhance both the speed of response and the utility of the opinion to the requesting party. The first category relates to the general information useful for the product and geographic market definition and the second is a description of the type of information needed, under the various sections of the civil provisions of the Act, which is specific to the proposed plan.

Step 1: Defining the Markets

In order to determine whether or not a company's proposed activities would adversely affect competition or an individual's business, one must be able to define, quite specifically, the nature, use and attributes of the product and of its substitutes, if any. It is then necessary to determine within which geographic market the product is produced and sold. The following is a non-exhaustive list of elements the Bureau uses to make these determinations:

1. Product Market

a. A physical description of the product; its intended uses; any regulations related to its production, distribution or sale; products which are complementary to its use and any and all substitutes for the product.

b. The availability of the product and the level of choice with respect to quality, size, and selection of the product.

c. Patents, trademarks or other property rights associated with the product.

d. The effect of a rise in price on purchasers' willingness to move to substitute products.

2. Geographic Market

a. The markets in which the product is produced and sold. The names of competitors of the company requesting the opinion.

b. The transportation costs associated with distributing the product; the willingness of customers to accept the transportation costs as part of the price and over what distance.

c. Tariff and non-tariff trade barriers; regulatory restrictions on transporting, exporting or importing the product.

d. The effect of a rise in price on purchasers' willingness to source product from distant markets.

Step 2: Plan-specific Information in Respect of the Civil Provisions

Section 75: Refusal to Deal

A company that is considering changing its method of distributing products may request an advisory opinion under section 75 of the Act. It may decide to supply its products in certain regions or to customers who meet certain criteria. As a result, existing customers may be cut off or potential customers may be refused supply. The following information, as may be relevant to the proposed business plan, would be necessary in order to prepare a complete advisory opinion:

a. If available to the supplier, information regarding who are its customers and a list of what products they purchase from the company and the type of business that they operate.

b. A list of names of companies that sell the same products and compete in the same market as the supplier.

c. A description of the usual trade terms that must be met by existing and potential customers. Are the trade terms non-discriminatory, clearly defined and made known to customers? Information regarding existing customers who have failed to meet usual trade terms in the past.

Inventory records which would demonstrate whether or not the product is in ample supply. Any information regarding changes in distribution resulting from the inability to furnish products through all channels of distribution or due to changes in the supply structure.

Section 77: Exclusive Dealing, Tied Selling and Market Restriction

Sections 78, 79: Abuse of Dominant Position

A company that intends to implement a particular plan (which includes any of the above types of contracts) may request an advisory opinion to determine whether or not concerns would be raised under the Act. The following information, as may be relevant to the proposed business plan, would be necessary in order to prepare a complete advisory opinion:

A complete description of the proposed plan, including any known possible effects of the plan on current or potential customers and competitors as well as the purpose for the plan (i.e. efficiency reasons).

1. An assessment of market power, which would include market share information, as well as a description of the barriers to entry and exit, excess capacity, time and costs required to enter the market, and the degree of sunk costs faced by potential entrants.

2. A discussion of the factors affecting competition in the particular industry, including price sensitivity, transportation costs and technological innovations.

Information regarding whether or not the plan in question would constitute a practice, that is a series of acts or a single act repeated a number of times.

A discussion of the defences, limitations and exceptions provided in sections 77(4), 77(5), 77(6), 70(3), 79(4), 79(5), 79(6) or 79(7) and whether or not they apply to the proposed plan. If the parties are affiliated companies, detailed records of the relationship between the companies and documents that substantiate the relationship. Any government regulation to which the activities of the industry are subject.

Merger Provisions Information Guidelines

Non-Complex Merger Transactions

Introduction

Non-complex merger transactions are characterised by an absence of competition issues. Conglomerate mergers, where the parties are not direct or potential competitors, and mergers in unconcentrated industries where the parties combined market share is less than 10% of a market based on a straightforward market definition fall within this category. In most of these cases, a minimal amount of information is required by the Bureau to prepare a timely decision to meet targeted service standards, and it is usually not necessary for Bureau staff to obtain a significant amount of information from third parties such as customers, competitors and suppliers to verify the submissions of the parties. Some examples of non-complex transactions involve typical securitization agreements, real estate transactions and minor upstream oil and gas transactions.

Examination Process

No or Minimal Competitive Overlap

In cases where the parties request that the Director provide an Advance Ruling Certificate regarding a transaction where there is no competitive overlap, it is suggested that the following information be provided with the request:

A description of the parties to the transaction, any relevant timelines and the estimated market value of the transaction;

A description of whether the transaction is an acquisition of assets or shares, an amalgamation, joint venture/strategic alliance or other form of transaction;

Statements describing the industry and the competitive environment of the subject transaction, including a description of the reasons why there is no or minimal competitive overlap between the merging parties;

Statements outlining the reasons why there are no competition issues that arise as a result of the transaction;

Moderate Competitive Overlap

In cases where there is a moderate degree of competitive overlap and industry concentration, the Bureau typically will require more information than referred to immediately above. Examples would include mergers in markets where the combined market shares of the parties are greater than 10%, but less than 35%, based on a straightforward market definition and there are no concerns about the merger enhancing inter-dependent market power, and mergers where barriers to entry are very low. In these circumstances, where the parties are either requesting that the Director issue an Advance Ruling Certificate and/or are filing a short-form prenotification of the proposed transaction, additional information may be required to substantiate submissions that the matter is non-complex and not likely to raise any competition issues.

It is suggested that the following information be provided:

1. List of the current suppliers and customers of the parties where competitive overlap is evident that account for more than 2% of the total annual volume or dollar value of purchases and sales respectively, together with their addresses, contact names, telephone numbers, and dollar or volume amounts purchased from each supplier or sold to each customer;

2. Description of the geographic regions of sales for the parties to the proposed transaction;

3. Estimated market value of the transaction;

4. Summary description of any product overlap or geographic overlap among the products that make up the subject businesses of the parties;

5. Estimate of the pre-merger and post-merger market shares of each of the overlapping products in the product and geographic markets as defined by the parties; and

6. Existing competitive impact analysis, competition brief or other documents that address the basis for the parties' market definition and market share/concentration submissions, as well as the other relevant factors under section 93 of the Act such as conditions of entry and effectiveness of remaining competition.

Service Levels

Once the Competition Bureau has determined whether a proposed merger is non-complex, it will undertake best efforts to finish its examination within 14 days of such determination. As in the case of complex and very complex mergers, if the initial prenotification filing or Advance Ruling Certificate request is deficient in information as suggested above, the 14 day period will start once the additional information is provided.

Generally, it is not necessary for the Bureau to obtain information from third parties in non-complex matters unless the parties are direct competitors and their combined market shares exceed 10%. In cases where some moderate competitive overlap exists, some substantiation with third parties may be necessary. In these cases where the transaction is not already in the public domain, a representative of the Bureau will provide prior notice that market contacts will be required. As indicated in the guidelines for complex and very complex mergers, in these instances the 14 day period will commence once the Bureau is in a position to make third party contacts.

Merger Provisions Information Guidelines
Complex and Very Complex Merger Transactions

Introduction

Since the implementation of the merger provisions of the Act in 1986, the Competition Bureau has adopted a flexible, compliance-oriented approach for the great majority of merger cases that it reviews. Where a merger case appears to be either complex or very complex, counsel to the parties typically will produce a competition brief, which will provide background information on the transaction and the industry, and present the views of the parties on the major issues that have to be analysed. In some cases supporting documentation is provided. These materials and initial discussions with the parties are often useful as an introduction to the matter and may help focus the subsequent examination on key issues.

These initial materials and discussions are complementary to, but not a substitute for, the normal examination process. Depending on the circumstances of the matter, written or oral requests for information and documents will be made to the parties. In a few cases, such requests may be very extensive and requested under oath, or formal powers may be exercised. In addition, an important part of the examination in many complex and very complex cases will be the collection of information from other market participants, which could include customers, competitors, suppliers, industry associations and government regulatory agencies. In a few cases, particularly in very complex cases, the Bureau will engage outside economic and industry consultants to assist in the examination process.

This information guideline is not intended to change the current flexible approach that the Bureau has adopted to the enforcement of the merger provisions of the Act. It is intended to provide guidance as to the type of information that should be considered for inclusion as part of a competition brief or additional submissions appended to a prenotification filing in a complex or very complex case. These materials will assist the Competition Bureau in its determination of whether the proposed transaction will be classed as a complex or very complex merger and help expedite the review process. The experience of the Competition Bureau has been that the more substantive and complete the competition brief and accompanying documents are at the initial stages of a matter, the more focused and expeditious the review process becomes. This generally translates into specific and shorter subsequent requests for information and fewer, more focused third party contacts. This should result in a more timely resolution of the issues in complex and very complex merger cases, while at the same time ensuring that a thorough examination of all the relevant issues has been undertaken.

Suggested Information

The key points that need to be addressed in any merger review are the definition of product and geographic markets, conditions of entry, market shares/concentration and the degree of effective competition remaining after the proposed transaction. Where gains in efficiencies or the failing firm factor are relevant, these also need to be assessed. The competition brief should provide the parties' views on these issues and provide supporting documentation. In preparing these materials, it will be useful to review the Merger Enforcement Guidelines which set out in detail the approach taken by the Bureau to each of the factors to be considered in a merger review.

The Competition Bureau has found that relevant pre-existing business documents used in the normal course of operations are very useful in assessing the factors to be considered. Consideration should be given to the inclusion of the following documents:

1. presentations, studies, reports or other documents prepared for the Board of Directors or senior management that discuss the rationale for the proposed transaction and that provide information on aspects of the transaction likely to be relevant (e.g. impact on pricing, output, efficiencies, competitors, market share, sales growth);

2. pro-forma business plans/strategic plans for the merged entity (if they exist);

3. relevant business plans/strategic plans of each party for the past three years;

4. marketing plans for each party for the past three years for those products that they both produce and which compete;

5. a copy of relevant sales or promotional materials that depict or describe the products made by both parties and which compete;

6. sales and production capacity (dollar and unit volume) for each of the parties for the products they produce which compete for the past three years and the location of relevant production facilities (it may be more convenient to summarise this information than produce underlying documents);

7. documents which describe the market share of the parties over the past three years. (third

party sources are often useful and should be provided if available);

8. internal studies, consultants' reports, industry studies, financial analysts' reports or industry publications that are relevant. Such materials, for example, may contain information on competitors, such as plant location, sales and capacity, or provide useful descriptions of the economics of the industry;

9. studies or reports prepared by or for the company which discuss the strengths or weaknesses of actual or potential competitors in each of the products made by both parties;

10. documents which describe any non-compete agreements or other types of agreements, arrangements or licences that the parties may have with third parties which would impede the ability of actual or potential competitors to compete with the parties now or in the future; and

11. documents that describe existing co-production agreements, joint ventures or strategic alliances with any competitor in relation to the overlapping products.

In considering what documentation to include, the parties should exercise judgement about relevancy, duplication and usefulness. In addition, where such documents may leave a false impression or provide an incomplete picture, the parties should provide a commentary which addresses these deficiencies. Failure to do so may undermine the value of the advice that the parties receive from the Bureau or may result in extending the period of time required by the Bureau to conduct its review.

The parties and their counsel are encouraged to discuss any questions or concerns they may have about the type of information or documents that may be useful in any particular circumstances with the staff of the Competition Bureau.

Service Levels

The level of complexity will normally be determined and conveyed to the parties within five business days of receipt of the prenotification filing and additional submissions or materials as suggested herein. Where the information provided at the time of the prenotification filing is insufficient to determine if a matter is complex or very complex, additional information will be

requested.

Once the Competition Bureau has determined that it has received sufficient information from the parties on the key analytical points outlined above, it will undertake its best efforts to finish its examination of complex cases within 10 weeks of such determination, and within 5 months of such determination in the case of a very complex merger matter.

As noted above, market participants are often an important source of information in the examination process. Accordingly, the Bureau must be in a position to discuss the proposed transaction with such participants. It is suggested that the proposed transaction be made public at or before the time of prenotification or application for an Advance Ruling Certificate. Where the parties would prefer to delay the public announcement of the proposed transaction, the Bureau will defer making market contacts, provided that there will be sufficient time before closing to conduct such contacts as the Bureau considers necessary. In such instances, however, the time periods for review noted above will not begin to run until such time that the Bureau is in a position to make third party contacts.

Advisory Opinions
Misleading Advertising and Deceptive Marketing
Practices Provisions - Information Guidelines

Advisory opinions may be requested by parties that will be making the representation or their agents or legal counsel, on proposed representations, advertisements, promotional material, and business plans to determine whether the situation described raises an issue under the misleading advertising or deceptive marketing practices provisions of the *Competition Act*. Examples of the materials that may be submitted for an advisory opinion are: any proposed advertisement; representations that include claims relating to performance, efficacy or length of life of a product; multi-level marketing plans; and promotional contests. The information required by the Director to prepare a timely opinion to meet targeted service standards is described below.

General Information Required for All Requests

1. Requests for advisory opinions are assessed based on the information provided. A clear description of the proposed representation accompanied by all relevant supporting information as set out in the following paragraphs will ensure that the representation is assessed in relation to the most appropriate provisions of the Act.

2. If a promotion involves both French and English material, a person making a request should indicate which material should form the basis for the opinion. Note that if a review of material in both languages is desired, two opinions will be required.

3. If the request is for an opinion in respect of one of the misleading advertising and deceptive marketing practices provisions of the Act other than sections 55, 55.1 and 59, then a specific proposed representation should be identified together with a draft of the advertisement or the context in which the representation will appear so that an informed assessment can be made of the general impression created by the representation. In addition there should be a statement of the facts which are relevant to the representation.

4. Describe the medium in which the proposed representation will appear (i.e. newspapers, television, packaging, internet, etc.) and provide the approximate time frames and the geographic area where it will run.

5. Include the name, address and phone number of the requester, advertiser, or proposed business.

The more complete and accurate the information provided, the less likely that the opinion will include qualifications or be subject to revision because of new information received.

Additional Information Required for Paragraph 52(1)(b) Advisory Opinions (Adequate and Proper Tests)

Representations that include any statement, warranty or guarantee of the performance, efficacy or length of life of a product would be considered for advisory opinions under paragraph 52(1)(b) of the Act. Each performance claim has to be based on an adequate and proper test, the proof of which lies on the person making the representation. The additional information required by the Director to prepare an opinion is the following:

1. A copy of all tests known to the advertiser which relate to each performance claim, including the test methodology, all test data and results, and any other relevant information.

2. A description of who performed the tests and where and when they were conducted.

3. An independent certification from a credible source that the tests fully substantiate the proposed claim.

4. A description of all standards and standards setting and monitoring organizations, which relate to the production or use of the advertised product and which are relevant to the proposed performance claims.

Note that opinions in relation to paragraph 52(1)(b) of the Act may not be provided if it is necessary for the Competition Bureau to commission experts to perform tests or assessments of tests in order to form an opinion.

Additional Information Required for Sections 55 and 55.1 Advisory Opinions (Multi-level Marketing Plans and Pyramid Selling)

Multi-level marketing plans and amendments to these plans would be considered for advisory opinions under sections 55 and 55.1 of the Act. The additional information required by the Director to prepare a timely advisory opinion to meet targeted service standards is the following:

1. Adequate disclosure of all material facts relating to the proposed plan, such as the disclosure of typical earnings in cases where the plan contains representations relating to compensation; the plan's buy-back or refund policy; or a description of any purchases that may be required to join the proposed plan.

2. Description of the compensation plan.

3. Copies of all promotional brochures, pamphlets, videos, audiotapes, contractual agreements and any other material which provides information relating to the marketing plan.

4. A description of when and how any promotional material will be used.

5. Confirmation that the proposed plan raises no issues that are being considered by any other law enforcement agency in Canada or abroad.

Note that an opinion under sections 55 and 55.1 of the Act will not be given in the following situations: where the plan involves gold or silver coins, the travel industry, or discount or debit cards. An opinion will not be given in these situations because of the difficulty of establishing the value of these products. In such cases it is not possible to determine whether consideration is being paid for the right to receive bonuses for recruitment.

An opinion will also not be provided where the operator is situated outside of Canada and there is no entity incorporated in Canada, or no individual located in Canada who could be liable for the actions of the company.

An opinion will not be given where a company discontinues operations and resurfaces under a new name until the new entity is monitored and it is determined that it is a viable business.

Additional Information Required for Section 59 Advisory Opinions (Promotional Contests)

Promotional contests would be considered for advisory opinions under section 59 of the Act. The additional information required by the Director to prepare an opinion is the following:

1. A copy of the Rules and Regulations for the contest.

2. A description of the medium in which the proposed promotion will appear (i.e. newspapers, television, packaging, internet, etc.) and provide the approximate time frames and the geographic area where it will run.

3. The number and value of prizes being awarded.

4. A description of any regional allocation of prizes.

5. The contest closing date.

6. The chances of winning each class of prize or a description of why it is not possible to know the probability.

7. Any fact within the knowledge of the contest-runner, that would affect materially one's chances of winning.

8. Copies of all advertising or other material which will be used to promote the contest and a description of when and how this material will be used.

If submitting artwork for an opinion, ensure that all visuals and copy are readable. If the contest is to be advertised in different media or in different versions, ensure that all material relating to each version and media type is submitted as an opinion only applies to the content of the particular submission and is not applicable to any other representations made in the course of the promotion.

Criminal Provisions (other than Misleading Advertising and Deceptive Marketing Practices)

Information Guidelines

Introduction

Advisory opinions are prepared with the objective of assisting business people in implementing strategies which they believe will improve their competitive position, without coming into conflict with the *Competition Act*. We have endeavored to do so, in as flexible as manner as possible, recognizing the importance of anonymity at times, and the level of comfort the requesting parties aspire to receive. As such, we have provided some opinions on the basis of a hypothetical situation. It should be understood by the parties, however, that the assurances provided by the opinion are directly proportional to the factual accuracy and detail upon which they are based.

Information which is helpful to the Bureau in responding to a request for an advisory opinion will, in most cases, relate to the assessment of how the proposed business plan will affect the level of competition in a specific market. While each of the criminal provisions refers to a particular competitive situation, the core of the analysis of a proposed plan will relate to determining, as accurately as possible, the actual product and geographic markets involved. Following this determination, and depending on the details of the proposed plan, other specific information will be needed to analyse the manufacturing, distribution, sales, pricing, promotional or other situation contemplated by those requesting the opinion.

Described below are the two categories of information which, if provided, will greatly enhance both the speed of response and the utility of the opinion to the requesting party. The first category relates to the general information useful for the product/geographic market definition and the second is a description of the type of information needed, under the various sections of the Act, which is specific to the proposed plan.

Business plans will vary in complexity and impact. It is not our intention to burden the business community unnecessarily with onerous information requirements. The categories of information mentioned are general. We, therefore, invite those wishing an advisory opinion to contact us in advance of their submitting a written request, which will allow for the submissions to focus on the key aspects of the proposal. In so doing, we may be in a position to streamline the requirements.

Step 1: Defining the Markets

Any assessment of the impact of a proposed plan on the level of competition in a market is one which must assess whether the firms involved are able to impose unilateral changes in a market. To determine whether this is possible one must be able to define, quite specifically, the nature, use and attributes of the product and of its substitutes, if any. Then it is necessary to determine within which geographic market the product is produced and sold. The following is a non-exhaustive list of elements the Bureau uses to make these determinations.

Product Market:

1. A physical description of the product; its intended uses; any regulations related to its production, distribution or sale; complementary products to usage; any and all substitutes for the product.

2. The availability of the product and its inputs. The level of choice with respect to quality, size, and selection of the product.

3. The speed of innovation and change related to the product. Patents, trademarks or other property rights associated with the product.

4. The effect of a change in price on purchasers' or suppliers' tendencies to move to substitute products.

Geographic Market:

1. Sources of supply, for all customers in Canada, of the product or its substitutes.

2. The transport costs associated with distributing the product; the willingness of customers to accept the transport costs as part of the price and over what distance.

.3. Tariff and non-tariff trade barriers; regulatory restrictions to transporting, exporting or importing the product.

4. The effect of a rise in price on purchasers' tendencies to source product from distant markets or on distant suppliers' tendencies to sell into the affected market.

Step 2: Plan-specific Information in Respect of the Criminal Provisions

Section 45: Conspiracy

1. A complete description of the proposed plan, including any known possible effects of the plan on current or potential customers, suppliers and competitors.

2. An assessment of market power, which would include market share data over a three year period, as well as a description of the difficulties associated with entering and exiting the business, including the time and costs required to enter.

3. A discussions of the factors affecting competition in the particular industry; price sensitivity; advertising; transport costs; technological innovations, etc.

4. A description of the countervailing power of those affected by the plan, if any. Details of market response to the proposed plan, such as customer reactions, if they are known.

5. A discussion of the defences and exceptions provided in sections 45(3), 45(5), and 45(6), if they apply to the proposed plan, as well as the applicability of any other provincial or federal laws or regulations, if any, to the activities and industry involved. In claiming a defence under 45(3) firms may wish to provide an assessment of the impact of the plan on prices, quantity or quality of production, markets or customers, or channels or methods of distribution; as well as whether the plan will restrict anyone from entering into or expanding a business.

Section 50(1)(a): Price Discrimination

1. A description of the proposed pricing plan, including any proposed fee schedule, discounts, rebates, allowances, price concessions or other advantages available to potential customers. The duration of the plan.

2. A description of the quantity and quality of articles involved in the proposed plan.

3. A description of the competing purchasers of the articles, as well as any affiliations between the seller and purchasers, or among the purchasers. An assessment as to whether or not buying groups, franchises or international affiliates are involved.

4. A description of the terms and conditions upon which the proposal is available to purchasers, for what duration and to whom it is available. Further, an explanation of whether the terms and conditions are to be made known to purchasers, as well as whether or not the terms and conditions are achievable by all potential competing purchasers.

Section 50(1)(c): Predatory Pricing

1. A description of the pricing plan, its intended duration, the rationale behind the plan, and the desired effect on competitors in the short and long term. A description of the terms and conditions upon which these prices are offered.

2. An assessment of market power, which would include market share data over a three year period, as well as a description of the difficulties associated with entering and exiting the business, including the time and costs required to enter.

3. The marginal or average variable cost and average fixed and total costs of producing/selling the product. A discussion of any losses expected as a result of the plan and for what duration. A discussion of the expectation, if any, of recoupment of the losses at a later date or through another profit centre.

Section 61: Price Maintenance

1. A description of the methods and channels of supply proposed in the plan, including the firm's marketing objectives, a list of customers and a description of the type of customer and the customers' marketing strategy or niche. A description of the industry norms related to the chain and levels of supply.

2. A description of the criteria used by the firm to determine which distributors, agents or resellers or other customers will obtain supply. Details of the terms and conditions of supply, such as those governing payment and credit, transportation, cooperative advertising, leases, consignment arrangements, and restrictions, such as exclusivity or granting of geographical territories.

3. Details of any affiliations between the firm and any of its customers.

4. Details of any difficulties experienced with existing or previous customers, including pressure to deal with a certain group or class of customer, and on specific pricing terms.

Appendix B

Form of Advisory Opinion Letter

TEXT FOR ADVISORY OPINIONS

Thank you for your letter dated . . . (with attachments) requesting an advisory opinion on the application of the *Competition Act* to the facts (or proposed transaction) set out below. The Program of Advisory Opinions seeks to facilitate compliance with the Act by indicating whether a particular practice or transaction would provide the Director of Investigation and Research with sufficient grounds to commence an inquiry on his own initiative pursuant to paragraph 10(1) b) of the Act. You should understand that the Director has no authority to decide the law. In addition, you should be aware that the Director, under certain circumstances, is obliged to commence an inquiry under paragraphs 10(1)(a)[2] and (c)[3] of the Act.

In the course of discussions you confirmed that these facts (or the proposed transaction) raise to your knowledge no issues that are being considered by any other law enforcement agency in Canada or abroad.

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[2] Paragraph 10 (1)(a) provides that six Canadian residents, under certain conditions, can require that the Director commence an inquiry.

[3] Paragraph 10 (1)(c) provides that the Minister may direct the Director to commence an inquiry.

Recital of Facts or Proposed Transaction

Our understanding of the facts (or the proposed transaction) is as follows:

Opinion Requested

Opinion Given

1) Positive Response

In my opinion, based on the information which you have provided, as set out above, there are not any grounds for causing an inquiry to be made pursuant to paragraph 10(1)(b) of the *Competition Act*.

2) Negative Response

In my opinion, based on the information which you have provided, as set out above, there could be grounds for causing an inquiry to be made pursuant to paragraph 10(1)(b) of the *Competition Act*.

(***In all cases***) The basis of this opinion is (give details)

This opinion is predicated on the assumption that no material facts have been omitted or misrepresented in your submission. It is also based on interpretation of the existing jurisprudence. Finally, this opinion will continue to be valid unless there is an amendment of the provision of legislation upon which it was based. Should you be uncertain as to the impact of any amendment on the opinion you have received, you should seek legal advice or re-contact the Competition Bureau.

If you have any further questions or require clarification of this letter, please do not hesitate to contact me.

Deputy Director

3) Advisory Opinion Letter for Multi-Level Marketing Provisions

Thank you for your letter dated...(with attachments) requesting an advisory opinion on the application of the *Competition Act* to the multi-level marketing plan of.....

The Program of Advisory Opinions seeks to facilitate compliance with the *Act* by indicating whether a particular practice or transaction would provide the Director of Investigation and Research with sufficient grounds to commence an inquiry on his own initiative pursuant to paragraph 10(1) b) of the *Act*. You should understand that the Director has no authority to decide the law. In addition, you should be aware that, under certain conditions, six Canadian residents can require the Director to commence an inquiry or the Minister may direct the Director to commence an inquiry.

In our opinion, based on the information which you have provided, there are not any grounds for causing an inquiry to be made pursuant to paragraph 10(1)(b) of the *Competition Act*.

This opinion is not to be used for recruitment purposes by the multi-level marketing company or by participants in the plan. You should also be aware that a positive opinion does not constitute approval of the marketing plan, and any representations suggesting such approval or if used for recruitment purposes, could give the Director reason to initiate an inquiry under the misleading advertising and deceptive marketing practices provisions of the *Competition Act.*

The opinion relates only to the provisions of the *Competition Act*, and not in relation to other statutes, such as the Criminal Code of Canada. Should additional information come to our attention, the above opinion could be revised or revoked. This could occur for instance, if an insignificant portion of sales is made to individuals who are not plan participants. In such circumstances there would be grounds to believe that a de facto purchase requirement exists which could raise an issue under s. 55.1(1)(b). In addition if there is an insignificant portion of sales to non-participants and the product is sold to participants at a price well in excess of fair market value, there would be grounds to believe that there may be a participation fee embedded in the purchase price and this could raise an issue under section 55.1(1)(a).

If you have any further questions or require clarification of this letter, please do not hesitate to contact me.

Yours sincerely,

Appendix C

Definitions of Complexity

Non- Complex Merger Transactions

Non-complex transactions are readily identifiable by the absence of competition issues and the minimal amount of work required to complete assessments. Generally, there is no (e.g. most conglomerate mergers) or minimal competitive overlap between the parties. For example, mergers where the parties combined post merger market share is less than 10% of a market based on a straightforward market definition would fall within this category. Also mergers in unconcentrated industries such as truck-load trucking, up stream oil and gas exploration and extraction (this would exclude pipelines, processing/refining and distribution), global mineral commodities where the parties are not significant players in Canada, and many real estate transactions such as the acquisition of hotels, office buildings and shopping centres fall within the non-complex category.

As well, changes in ownership in a corporation from de facto to de jure control (i.e. 40% to 55% control), securitizations[4] and international mergers where only one of the parties has a significant presence in Canada also fall within the non-complex category.

Most non-complex transactions are brought to the Bureau's attention by way of Advance Ruling Certificate requests or short form prenotification filings. The amount of work required is usually limited to a few phone calls with counsel, reviewing precedent cases in the industry in question and, in some instances, a few phone calls with third parties to verify the merging parties submissions.

It is the experience of the Mergers Branch that approximately 85% of merger transactions fall within the non-complex category.

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[4] A minimal administration fee of $50.00 will be charged for securitization transactions as it is intended to exempt such transactions from the application of Part IX in the near future.

Complex Merger Transactions

Complex mergers involve transactions between direct or potential competitors as well as mergers between customers and suppliers where there are indications that the transaction may create or enhance market power according to the enforcement policies set out in the Merger Enforcement Guidelines. Generally, mergers in this category occur in concentrated industries where there are barriers to entry. Merger transactions that generate unsolicited, creditable complaints where market power indicia are also present also fall within the complex merger transaction category.

The assessment of complex merger transactions usually presents one or more analytical challenges, such as defining the correct relevant market, evaluating the effectiveness of remaining competition, assessing potential sources of new competition, or determining the impact of change and innovation in a market. Complex merger examinations potentially could develop into Tribunal cases; however, this is not immediately obvious when the matter first comes to the attention of the Bureau. In addition to reviewing issues with counsel for the merging parties and reviewing precedent cases, complex merger examinations require third party contacts to obtain information and test the merging parties submissions, information requests as well as meeting with the merging parties and, occasionally, third parties. The examination may involve two or more officers working as a team, and these cases require a written assessment to be prepared for the review of management.

It is the experience of the Mergers Branch that approximately 10% of merger transactions fall within the complex category.

Very Complex Merger Transactions

A very complex case is typically characterised by indications early in the preliminary examination that the transaction is likely to create or enhance market power according to the enforcement policies set out in the Merger Enforcement Guidelines, and Tribunal proceedings are a strong possibility. Generally, mergers between the leading participants in concentrated industries, where it is reasonable to conclude that the market share and concentration thresholds set out in the Merger Enforcement Guidelines are surpassed, and where high barriers to entry are evident fall within this category. These transactions often involve considerations of complex areas of inquiry such as the failing firm or efficiencies defence as well as other considerations such as the availability of a practical remedy or a unique theory of anti-competitive harm. The latter consideration is particularly important in merger cases where a prevention of competition or vertical issues are evident. Differing interests of third parties, for example customers and suppliers, well articulated complaints or competing public policy objectives, for example trade protection and competition, are often evident in the analysis of very complex merger transactions.

Very complex merger transactions are characterised by rigorous assessments and the

volume of work required is much greater than in the case of complex transactions. Usually, very complex cases quickly progress to the formal inquiry stage and may involve the use of formal powers to obtain information. The volume of work necessitates the use of case teams consisting of three or more officers, economists from the Economic Policy and Enforcement Division, legal counsel as well as outside experts. Contracts for experts have to be prepared and, occasionally, requests justifying the need for outside counsel. In addition to preparing written assessments, very complex cases usually involve negotiating hold-separate arrangements and preparing Tribunal pleadings.

It is the experience of the Mergers Branch that approximately 5% of merger transactions fall within the very complex category.

Non Complex Advisory Opinions

Non-complex requests are those that deal with proposed business conduct and/or transactions where all related and pertinent information is provided by the requester, and there is a sufficient amount of jurisprudential information and established Bureau policy and procedures for the Bureau to formulate an opinion.

Complex Advisory Opinions

Complex requests are those that deal with proposed business conduct and/or transactions where all related information is provided by the requester, but where the proposed conduct deals with a novel issue where there is little or no jurisprudential information, no previous interpretation on the subject by the Bureau and/or where a legal opinion may be required; and/or where the period of time necessary to review the amount of material submitted will substantially exceed the turn-around time established to deliver a non-complex opinion.